

Attorney's Docket No. 199-2102

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gary S. Strumolo
Serial No.: 09/ 580,056
Filed: May 27, 2000
For: Vehicular Mirror

Group Art Unit: 2872
Examiner: Mark. A. Robinson

Commissioner for Patents
Alexandria, VA 22313

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION-37 CFR 192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on Oct. 12, 2004.

NOTE: "The Appellant shall, within 2 months from the date of the notice of appeal under §1.191(a) or within the time allowed for response to the action appealed from, if such time is later, file a brief in "triplicate", 37 C.F.R. 1.192(a) [emphasis added].

2. STATUS OF APPLICANT

This application is on behalf of:

X other than a small entity.
___ a small entity.

A verified statement:

___ is attached.
___ was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 CFR 1.17(f), the fee for filing the Appeal Brief is:

___ small entity \$250.00
X other than a small entity \$500.00

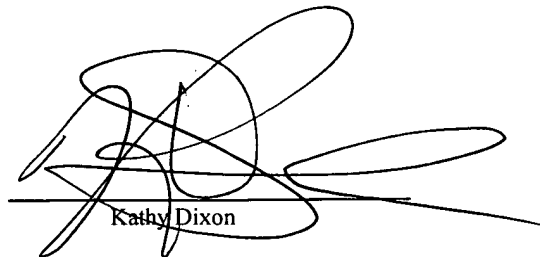
Appeal Brief fee due: \$ 500.00

Certificate of Mailing/Transmission (37 CFR 1.8(a))

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Kathy Dixon

Dated: Dec. 13/04

4. EXTENSION OF TERM

NOTE: The time periods set forth in 37 CFR 1.192(a) are subject to the provision of ☐ 1.136 for patent applications. 37 CFR 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply:

(complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 CFR 1.136
(fees: 37 CFR 1.17(a)-(d) for the total number of months checked below:

	Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/>	one month	\$ 120.00	\$ 60.00
<input type="checkbox"/>	two months	\$ 450.00	\$225.00
<input type="checkbox"/>	three months	\$ 1,020.00	\$510.00
<input type="checkbox"/>	four months	\$1,590.00	\$795.00

Fee: \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for _____ months has already been secured, and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request: \$ _____

or

- (b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal Brief Fee: \$ 500.00
Extension fee (if any) \$ _____

TOTAL FEE DUE: \$ 500.00

6. FEE PAYMENT

X Charge Deposit Account No. 06-1510 the sum of \$ 500.00

A duplicate copy of this transmittal is attached.

7. FEE DEFICIENCY

NOTE: If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to charge the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

 X If any additional extension and/or fee is required, this is a request therefor
to charge Deposit Account No. 06-1510

And/Or

 X If any additional fee for claims is required, please charge Deposit Account
No. 06-1510



Signature of Attorney

Registration No. 31,311

Telephone: (248) 540-4040

Randy W. Tung

Tung & Associates
838 W. Long Lake Road, Ste. 120
Bloomfield Hills, Michigan 48302



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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re the Application Of
Gary S. Strumolo, et al
Application No.: 09/580,056

Mark A. Robinson
Primary Examiner
Art Unit 2872

Filed: 05/27/2000

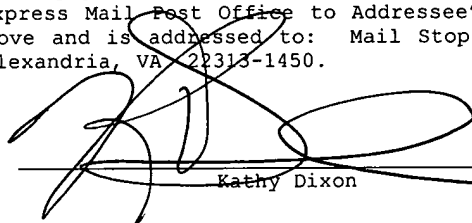
For: Vehicular Mirror

Attorney Docket No.: 199-2102 (062)

EXPRESS MAIL CERTIFICATE

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I hereby certify that this paper, in triplicate, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop: Appeal, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Kathy Dixon

APPEAL BRIEF

Mail Stop: Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants appeal in the captioned application from the Examiner's final rejection dated July 12, 2004 of claims 21-27 under 35 USC 103(a) as being unpatentable over Lynam '451 in view of Marhauer '770.

It is urged that the rejection be reversed and that all the claims be allowed.

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(1) REAL PARTY IN INTEREST

The real party in interest in the present appeal is the recorded Ford Global Technologies, Inc.

(2) RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences or judicial proceedings that are known to the Appellants, the Appellants' legal representative, or the assignee and which may be related to, directly affect, be directly affected by or have a bearing on the Board's decision.

(3) STATUS OF CLAIMS

Claims 21-27 are rejected.

Claims 21-27 are appealed.

(4) STATUS OF AMENDMENTS

No Amendment after Final Rejection has been filed in the present case.

An advisory action rejecting all claims dated October 18, 2004 was received from the Examiner.

A Notice of Appeal was filed on or about October 25, 2004.

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(5) SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a side view type of vehicular mirror having a relatively wide field of view and being adapted to display images of objects in close proximity to the vehicle upon which the mirror is mounted, thereby substantially eliminating the "blind spot" which is usually associated with traditional vehicular side view type of mirrors. (Specification, page 1, lines 5-11)

The embodiments of the vehicular mirror of the present invention are best depicted in Figures 1 and 2 of the drawings. Figure 1 illustrates an embodiment of the vehicular mirror mounted on a vehicle. Figure 2 illustrates a front view of the vehicular mirror. Figure 3 is a graph which illustrates the mirror height as a function of mirror length. Figure 4 is a graph which illustrates the mirror curvature as a function of mirror length. The details of the vehicular mirror are described on page 5, line 14- page 9, line 10 of the specification.

One embodiment of the vehicular mirror is exemplified in independent claim 21, which recites a vehicular mirror which may be selectively attached to a vehicle exterior. The vehicular mirror assembly 12 comprises a rear-view mirror protective shroud 14. A mirror 12 is wholly and operatively

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disposed within the protective shroud 14 and has a first half 18, 22 which is proximate the vehicle 10 and which curves away from the driver of the vehicle 10 and a second planar half 16 which is distal to the vehicle 10 and continuous with the first half 18, 22. The first half 18, 22 has a height which varies from about zero millimeters to about eight millimeters and has a continually varying curvature. The mirror 12 further has a score line 30 which is resident upon the first half 18, 22. A switch assembly 15 having a selectively depressible switch member causes the mirror 12 to move to a predetermined position upon being depressed. (Specification, page 5, line 14-page 6, line 19)

A method for increasing the rearward viewing range of a driver of a vehicle is exemplified in independent claim 25. The method comprises the steps of providing a mirror assembly having a mirror 12 with a planar half 16 and a curved half 18, 22. The curved half 18, 22 has a height which varies from about zero millimeters to about eight millimeters and which has a continually varying curvature. The curved half 18, 22 has a first portion 18 which is proximate to the planar half 16 and provides a first image having a substantially true measure of distance and a second portion 22 which provides a second image having a false measure of distance. The method comprises forming a score line 30 upon the curved half 18, 22 between the

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first portion 18 and the second portion 22, which score line 30 is effective to separate the first image from the second image. The method further comprises coupling the mirror assembly to an exterior of the vehicle 10, wherein the planar half 16 of the mirror 12 is distal to the vehicle 10 and the curved half 18, 22 of the mirror 12 is proximate to the vehicle 10. The method further comprises adjusting the mirror assembly to cause the score line 30 to be visually aligned with a rear portion of the vehicle 10. (Specification, page 6, line 20-page 8, line 11)

(6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 21 to 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,522,451 (Lynam) in view of U.S. Pat. No. 4,306,770 (Marhauer).

(7) ARGUMENT

(A). Rejection of claims 21-27 under 35 U.S.C. 103(a) as being unpatentable over Lynam in view of Marhauer

Claims 21-27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lynam, U.S. Pat. No. 6,522,451, in view of Marhauer, U.S. Pat. No. 4,306,770.

It is believed that claims 21-24 and claims 25-27 are separately patentable on the grounds that claims 21-24 define a mirror assembly whereas claims 25-27 define a method having a

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combination of limitations which is not set forth in claims 21-24.

Lynam in view of Marhauer fails to teach invention of claims 21-24

It is respectfully submitted that Lynam in view of Marhauer fails to render claims 21-24 obvious under 35 U.S.C. 103(a), as hereinafter discussed in detail.

Independent claim 21, from which claims 22-24 depend, recites "A vehicular mirror assembly...comprising...a mirror...having a first half...and a second planar half which is...continuous with said first half...".

In the Office action dated July 12, 2004, the Examiner stated:

The limitations of these claims stand rejected as discussed previously, except that Lynam in view of Marhauer does not teach the planar second half (50) to be continuous with the curved second half (55) (see Lynam fig. 5G). However, mirrors with continuous planar and curved portions are well known in the art. Further, it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184. Thus, it would have been obvious at the time of invention to remove the demarcation element (65) of Lynam in order to provide an unobstructed view and a smooth transition between the curved and planar portions.

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Each of the drawing Figures in the Lynam patent shows a demarcation element (reference numerals 65, 165, 265 in Figs. 5A-5H, Fig. 6 and Fig. 7, respectively) on the Lynam mirror. Furthermore, the Lynam specification repeatedly expresses the desirability of providing a demarcation element between the planar and multiradius portions of the mirror. For example, in the Abstract, lines 16-20 of the Lynam patent, it is stated:

"The plano reflective element and the multiradius portion are separated by a demarcation element which enables the driver to readily delineate a rearward view in the multiradius portion".

Such desirability for the demarcation element is reiterated in col. 3, lines 56-60 of the Lynam patent, which states:

The demarcation element enables the driver of a vehicle equipped with the plano-multiradius reflective element of this invention to readily delineate a rearward view in the plano portion from a rearward view in the multiradius portion.

In the advisory action dated October 18, 2004, the Examiner stated:

Continuation of 5 does NOT place the application in condition for allowance because: the final rejection is still deemed to be valid. Applicant has argued that Lynam in view of Marhauer does not teach the two portions to be continuous. However, Lynam clearly states in col. 9-10 that the gap between the portions may

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be eliminated, thus resulting in continuous mirror portions.

However, a close review of the Lynam patent reveals that the Lynam patent does not teach the gap between the plano portion and the multiradius portion to be continuous. Rather, in col. 10, lines 40-45 of the Lynam patent, it is stated:

Note that, optionally, side B of plano element 50 and side C of multiradius element 55 can *touch* (leaving substantially no gap or space therebetween) [Emphasis added].

It is therefore respectfully submitted that the Lynam patent teaches away from providing continuity between the curved half (55) and the planar half (50) of the Lynam mirror. Such continuity would defeat the stated goal of "[enabling] the driver...to readily delineate a rearward view in the plano portion from a rearward view in the multiradius portion" (col. 3, lines 56-60 of the Lynam patent).

Furthermore, as shown in Fig. 3 of the Marhauer patent, the planar portion (7) and the curved portions (9, 10) of the Marhauer mirror are sharply discontinuous with each other.

Therefore, it is respectfully submitted that the Marhauer patent would fail to provide any teaching, suggestion or motivation to a person of ordinary skill in the art to

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provide continuity between the plano element and the multiradius element of the mirror disclosed in the Lynam patent.

The rejection of claims 21-24 is further traversed on the grounds that Lynam in view of Marhauer fails to teach or suggest, in combination, "A vehicular mirror assembly...comprising...a mirror...having a first half which is proximate to [a] vehicle and which curves away from a driver of said vehicle and a second planar half which is distal to said vehicle and continuous with said first half...said mirror further having a score line which is resident upon said first half", as recited in claim 21 and defined by claims 22-24 as dependent from claim 21.

In each of the embodiments of the mirror disclosed in the Lynam patent (most clearly shown in Figs. 3, 5A-5H, 6 and 7), the planar portion (50) is notably larger than the multiradius portion (55). Therefore, the planar portion and the multiradius portion do not constitute "a first half...and a second planar half" of the Lynam mirror, as is the case with respect to the mirror defined by applicants' claims 21-24. Furthermore, the Lynam patent fails to teach or suggest "a score line resident upon said first half" of the Lynam mirror, as set forth in claim 21.

Also, the Lynam patent teaches that when the Lynam mirror is mounted on a vehicle, the plano portion (50) is

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located closer to the vehicle than the multiradius portion (55).

In col. 7, lines 30-41 of the Lynam patent, it is stated:

When mounted into exterior side view mirror assembly 12 and/or 14, plano-multiradius reflective element assembly 30 is preferably orientated so that at least a portion of (more preferably a substantial portion of) the reflector surface of plano element 50 is positioned closer to the vehicle body (and hence to the driver) than any portion of the reflector surface of multiradius element 55. Thus, and referring to FIG. 3, side A of plano element 50 of plano-multiradius reflective element assembly 30 is positioned closer to the driver than side D of multiradius element 55 when plano-multiradius reflective element assembly 30 is mounted on an automobile.

The mirror disclosed in the Marhauer patent includes a planar portion (7) and a convex portion (9, 10). As is the case with the Lynam mirror, the planar portion (7) is notably larger than the convex portion (9, 10) of the Marhauer mirror, as shown in Figures 2 and 4 of the Marhauer patent.

Also like the Lynam mirror, when the Marhauer mirror is mounted on a vehicle, the planar portion (7) of the Marhauer mirror is disposed proximal to a vehicle, whereas the convex portion (8) is disposed distal to the vehicle (as indicated by the unlabeled mirror support shown in the lower right-hand portion of the mirror of Fig. 2). A gap (11, Fig. 2) separates adjacent portions (9, 10) of the convex portion (8) from each other.

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Therefore, it is respectfully submitted that the Marhauer patent would fail to provide any teaching, suggestion or motivation to a person of ordinary skill in the art to modify the Lynam mirror in such a manner that area of the multiradius mirror portion is substantially increased to half the area of the Lynam mirror, in combination with providing a score line resident on the multiradius mirror portion of the Lynam mirror, and further in combination with reversing the position of the Lynam mirror such that the multiradius mirror portion is proximal to a vehicle and the planar mirror portion is distal to the vehicle, as defined by claims 21-24 of the instant patent application.

It is therefore respectfully submitted that Lynam in view of Marhauer fails to teach or suggest all of the limitations of claim 21 and claims 22-24 as dependent from claim 21.

Accordingly, it is respectfully submitted that Lynam in view of Marhauer fails to render claims 21-24 obvious within the contemplation of 35 U.S.C. 103(a). The rejection of claims 21-24 under 35 USC 103(a) as being unpatentable over Lynam in view of Marhauer is therefore improper and must be reversed.

In the Advisory action dated October 18, 2004, the Examiner stated:

Applicant is now also arguing that the references do not show the mirror to comprise a first half and a second half. In response, it should be

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noted that applicant's disclosure does not teach the mirror portions to each comprise exactly half of the mirror. Thus, this recitation has been heretofore interpreted as meaning first and second mirror portions so as to be consistent with applicant's disclosure. Accordingly, the references are seen to satisfy this limitation in a similar manner as the device set forth in applicant's disclosure.

However, on page 6, lines 8-13 of applicant's specification, it is stated:

In one non-limiting embodiment of the invention, portion 18 curves in a direction "towards" the front 9 of the vehicle 10 in a generally convex manner and comprises about one half of the length of the mirror 12 (i.e., portions 16 and 18 "meet" along central axis 20).

Furthermore, in Fig. 2 of applicant's drawings, it can be clearly seen that the planar portion (16) and curved portion (18, 22) are each approximately one-half of the length of the mirror 12. Therefore, contrary to the Examiner's contention, the interpretation of the planar portion and convex portion of the mirror defined by applicants' claims 21-24 as covering respective halves of the mirror is completely consistent with applicants' disclosure.

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Lynam in view of Marhauer fails to teach invention of amended claims 25-27

It is respectfully submitted that Lynam in view of Marhauer fails to teach or suggest all of the limitations of claim 25 and claims 26 and 27 as dependent from claim 25.

Lynam in view of Marhauer fails to teach or suggest "providing a mirror assembly having a mirror with a planar half and a curved half", as the planar section of both the Lynam mirror and of the Marhauer mirror is notably larger than one-half the area of the corresponding mirror, as noted in detail herein above with respect to the rejection of claims 21-24.

Furthermore, neither Lynam nor Marhauer teaches or suggests "A method...comprising...providing a mirror assembly having a mirror with a planar half and a curved half...forming a score line upon said curved half between said first portion and said second portion, effective to separate said first image from said second image", as set forth in claim 25.

In contrast, Lynam discloses a mirror comprising a planar section (50) and a multiradius section (55) separated by a demarcation element (65). Lynam fails to teach or suggest "forming a score line upon" the multiradius section. Furthermore, Marhauer fails to teach or suggest "forming a score line upon" the convex mirror portion (8) of the Marhauer mirror. Therefore, it is respectfully submitted that Marhauer fails to

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teach or suggest "forming a score line upon" the multiradius section of the Lynam mirror.

Consequently, it is respectfully submitted that Lynam in view of Marhauer fails to teach or suggest "adjusting said mirror assembly to cause said score line to be visually aligned with a rear portion of said vehicle", as set forth in claim 25.

Moreover, as shown in Fig. 5 of the Marhauer patent, the entire field of vision of the Marhauer mirror is aligned with an area adjacent to a vehicle, rather than with "a rear portion of the vehicle", to which the mirror is attached. Therefore, it is respectfully submitted that Marhauer fails to teach or suggest aligning any portion of the Lynam mirror with "a rear portion of the vehicle" to which the mirror is attached.

Accordingly, it is respectfully submitted that Lynam in view of Marhauer fails to render claims 25-27 obvious within the contemplation of 35 U.S.C. 103(a). The rejection of claims 25-27 under 35 USC 103(a) as being unpatentable over Lynam in view of Marhauer is therefore improper and must be reversed.

CLOSING

In summary, the Appellants have shown that their claimed invention is fully supported by a body of evidence of non-obviousness. It is therefore respectfully submitted that such evidence of non-obviousness overcomes any showing of obviousness presented by the Examiner. The Appellants therefore

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submit that the final rejection of their claims 21-27 under 35 USC 103(a) is improper.

The reversal of the final rejection is respectfully solicited from the Board.

Respectfully submitted,

Tung & Associates

By: 

Randy W. Tung

Registration No. 31,311

Telephone: (218) 540-4040

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(8) CLAIMS APPENDIX

21. A vehicular mirror assembly which may be selectively attached to a vehicle exterior, said vehicular mirror assembly comprising:

a rear-view mirror protective shroud;

a mirror which is wholly and operatively disposed within said protective shroud and having a first half which is proximate to said vehicle and which curves away from a driver of said vehicle and a second planar half which is distal to said vehicle and continuous with said first half, said first half having a height which varies from about zero millimeters to about eight millimeters and which has a continually varying curvature, said mirror further having a score line which is resident upon said first half; and

a switch assembly having a selectively depressible switch member which causes said mirror to move to a predetermined position upon being depressed.

22. The vehicular mirror assembly of claim 21 wherein said first half comprises a first portion which provides a first image of an object having a substantially true measure of distance and a second portion which is proximate to said vehicle and which provides a second image of a second object having a false measure of distance.

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23. The vehicular mirror assembly of claim 22 wherein said score line is disposed between said first portion and said second portion of said first half thereby separating said first image of an object having a substantially true measure of distance from said second image of a second object having a false measure of distance.

24. The vehicular mirror assembly of claim 21 wherein said continuously varying curvature is inversely proportional to a radius of curvature.

25. A method for increasing the rearward viewing range of a driver of a vehicle, said method comprising the steps of:

providing a mirror assembly having a mirror with a planar half and a curved half, wherein said curved half has a height which varies from about zero millimeters to about eight millimeters and which has a continually varying curvature, said curved half having a first portion which is proximate to said planar half and which provides a first image having a substantially true measure of distance and a second portion which provides a second image having a false measure of distance;

forming a score line upon said curved half between said first portion and said second portion, effective to separate said first image from said second image;

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coupling said mirror assembly to an exterior of said vehicle, wherein said planar half of said mirror is distal to said vehicle and said curved half of said mirror is proximate to said vehicle; and

adjusting said mirror assembly to cause said score line to be visually aligned with a rear portion of said vehicle.

26. The method of claim 25 wherein said continuously varying curvature is inversely proportional to a radius of curvature.

27. The method of claim 25 wherein said step of coupling said mirror assembly to an exterior of said vehicle further comprises the steps of:

providing a mirror housing;

mounting said mirror assembly within said mirror housing;

and

coupling said mirror housing to a driver's-side of said vehicle exterior.